

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Grace New England, et al., *

*

Plaintiffs, *

v. *

Docket No. 1:24-cv-00041-PB-AJ

*

Weare, NH, Town of, et al., *

*

Defendants. *

DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT

Defendants, the Town of Weare, New Hampshire, Craig Francisco, and Tony Sawyer, by and through counsel, Gallagher, Callahan & Gartrell, P.C., hereby submit this Motion for Summary Judgment, pursuant to Fed. R. Civ. P. 56, and state as follows:

1. Plaintiffs, Howard Kaloogian and Grace New England Church (collectively, the “Church), have filed a Complaint alleging the following claims: (I) a violation of the Free Exercise Clause of the First and Fourteenth Amendments; (II) a Substantial Burden violation of the Religious Land Use and Institutionalized Persons Act (“RLUIPA”); (III) an Equal Terms violation of RLUIPA; (IV) a violation of NH RSA 674:76; and (V) a violation of Part 1, Art. 5 of the New Hampshire Constitution.
2. The Defendants move for summary judgment with respect to all claims because there are no genuine issues of material fact in dispute, and the Defendants are entitled to judgment as a matter of law.
3. Specifically, there is no genuine dispute that the subject property was previously used only as a traditional residence for an individual family, and has undergone a non-residential change of use, allowing an incorporated Church to operate on the property and

assemble members of the public on a twice-weekly basis. There is no genuine dispute that the Weare Zoning Ordinance requires review from the Weare Planning Board when a property has undergone a change in use from residential to non-residential, regardless if the use is secular or religious. And, there is no genuine dispute that the Church has continued its free exercise of religion without burden; the Church has been treated the same as all other properties undergoing a change of use, whether secular or religious; and the Church has been treated in conformance with the State Constitution, Federal Constitution, and state law. The record is devoid of evidence which supports the Church's allegations, therefore, the Defendants are entitled to summary judgment on all claims.¹

4. The Defendants submit and incorporate, by reference, a supporting memorandum of law, and appendix of the evidentiary record in support of this Motion for Summary Judgment. *See* Local Rule 7.1(a)(2).
5. Given the dispositive nature of this pleading, the Defendants did not seek Plaintiffs' concurrence with respect to the relief requested herein. *See* Local Rule 7.1(c).

WHEREFORE, the Town of Weare, New Hampshire, Craig Francisco, and Tony Sawyer, respectfully request that this Honorable Court:

- A. Grant this Motion for Summary Judgment; and
- B. Grant such further relief as justice may require.

¹ Record citations to establish these undisputed facts are provided in the supporting Memorandum of Law, filed herewith.

Respectfully submitted,

**TOWN OF WEARE, NEW HAMPSHIRE
CRAIG FRANCISCO
TONY SAWYER**

By Their Attorneys,

Gallagher, Callahan & Gartrell, P.C.

Dated: March 28, 2025

/s/ Emily C. Goering
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CERTIFICATE OF SERVICE

I, Emily C. Goering, hereby certify that a copy of the foregoing was sent to all counsel of record via ECF.

Dated: March 28, 2025

/s/ Emily C. Goering
Emily C. Goering